

STATE OF NEW MEXICO'S RULE 71.3 REPORT

FY 2024 (July 1, 2023 to June 30, 2024)

EXHIBIT B: NORTHERN NEW MEXICO/PECOS ADJUDICATION BUREAU

June 26, 2023

Pursuant to the requirements of Rule 1-071.3 NMRA, the State of New Mexico presents its report setting out the State's proposed priorities and its analysis of resources needed by the Courts and the State in the Northern New Mexico/Pecos Adjudication Bureau for fiscal year 2024 (July 1, 2023 to June 30, 2024). This report will be filed in each of the Bureau's adjudications. The available resources are based upon full time employee ("FTE") time as of the date of this filing, including contractors, and are listed in Table 1.

During fiscal year 2022, the State's Northern New Mexico and Pecos Bureaus were reorganized to combine Northern and Pecos into one Bureau, while at the same time separating out Indian water right matters to be managed under a separate Bureau for Pueblos, Tribes, and Nations. For fiscal year 2023, the Bureau for Pueblo, Tribes, and Nations for the first time contemporaneously filed its own report on priorities and resources.¹ This report speaks only to the Northern New Mexico/Pecos Bureau's non-Indian adjudication matters.

In addition to those active adjudication lawsuit activities described below, significant additional attorney, paralegal, contractor, and technical resources have been or will be committed this fiscal year to implementing completed decrees in the Pecos², and in *Aamodt*³.

¹ This transition results in the metrics contained in the one report for FY 22 tracking into two reports for FY 23 and FY 2024.

² The Pecos Priority Project.

³ Specifically, the State is tasked with implementing Section 4 protection pursuant to the *Aamodt* Settlement Agreement and the *Aamodt* Final Judgement and Decree.

SUMMARY OF AVAILABLE RESOURCES FOR NORTHERN NEW MEXICO/PECOS ADJUDICATION BUREAU

| | FY2021 FTEs | FY2022 FTEs | FY2023 FTEs | FY2024 FTEs |
|--|----------------|----------------|----------------|----------------|
| Total Bureau Staff and Contractor Resources | 21.65 | 19.3 | 12.0 | 12.5 |
| State Adjudications: | 12.35 | 11.6 | 8.0 | 8.5 |
| I. San Juan Adjudication | 5.0 | 4.40 | 3.0 | 2.5 |
| II. San Jose Adjudication (<i>Kerr-McGee</i>) | .80 | 0.75 | - | - |
| III. Santa Fe Adjudication (<i>Anaya</i>) | - | - | - | 0.5 |
| IV. Pecos Adjudication (<i>Lewis</i>) | 6.55 | 6.45 | 5.0 | 5.5 |
| Federal Adjudications: | 9.3 | 7.7 | 4.0 | 4.0 |
| V. Chama Adjudication (<i>Aragon</i>) | 4.10 | 3.30 | 2.0 | 1.5 |
| VI. Zuni Adjudication (<i>A&R</i>) | .40 | 1.00 | 0.5 | - |
| VII. Santa Cruz/Truchas Adjudication | .60 | .35 | - | 0.5 |
| VIII. Santa Clara Creek | - | - | - | 1.0 |
| IX. Jemez Adjudication (<i>Abousleman</i>) | .20 | .35 | - | - |
| X. Nambé, Pojoaque, Tesuque Adj. (<i>Aamodi</i>) | .20 | .20 | - | - |
| XI. Taos | 3.80 | 2.5 | 1.5 | 1.0 |

STATE COURT ADJUDICATIONS - PRIORITIES FOR FY 2024

I. SAN JUAN ADJUDICATION, *New Mexico v. U.S., Jicarilla Apache Tribe and Navajo Nation*, Case No. D-1116-CV-75-184 (11th Judicial District, San Juan County)

A. Accomplishments Over the Past Few Years:

1. Section 1: La Plata

- a. **Claims of unknown claimants in the La Plata section:** In February of 2018 the State published notice of the pendency of this adjudication lawsuit to all unknown claimants. No additional claims resulted from this.
- b. **Surface water domestic and stock claims in the La Plata section:** In March 2019, the Court issued its *Order to Show Cause* regarding surface water domestic and stock claims. Eight Requests for Consultation were timely served on the State. Two proved not to be objections to the *Order to Show Cause*. Another was resolved by the Court's March 7, 2022, entry of the ten amended NMDOT orders. Five of these claims remain pending.
- c. **Preparation of the appendix to the Partial Final Decree:** The appendix is the computer-generated summary of the approximately six hundred subfile consent orders entered in the course of these La Plata proceedings. The appendix to what will be the

proposed Final Decree has been and continues to be proofed and updated.

d. Errors and Omissions: In February 2023 the Court entered two *Orders* for expedited procedures for globally correcting mistakes that are shared by multiple consent orders under Rules 60(a) and 60(b), respectively. Clerical errors that can be corrected under Rule 1-060(A) NMRA, and substantive errors that can be corrected under Rule 1-060(B) NMRA, have since then been the subject of global motions under this procedure approved by the Court. To date the State has submitted for the Court's approval nine *Motions* to correct errors in 100 subfiles.

2. City of Aztec, Farmington and Bloomfield: Settlement agreements were reached with each of the three municipalities regarding the adjudication of their water rights. Discussions to reduce their terms to the form of consent orders, and to agree on procedures to submit those proposed consent orders to the Court for entry have been undertaken between the parties.

B. FY 2024:

1. Section 1: La Plata

a. Claims of unknown claimants in the La Plata section: The State will file its motion requesting the Court enter an order granting judgment by default against all unknown claimants finding they have no surface water rights in the La Plata section.

b. Surface water domestic and stock claims in the La Plata section: Five remaining outstanding claims require field visits and further consultation which the State hopes to conclude before the end of this year, wrapping up surface water domestic and stock proceedings by the end of this calendar year.

c. Preparation of the appendix to the Partial Final Decree: The appendix continues to be reviewed for consistency with the individual orders and maps, and for omissions and errors, both clerical and substantive.

d. Errors and Omissions: The State will continue to submit motions to the Court to correct clerical and substantive errors in previously entered subfile orders adjudicating water rights. Approximately another 100 subfiles will be affected, resulting in perhaps a half-dozen motions—most of these requiring field work or technical review by the Hydrographic Survey Bureau. The State anticipates completing this field work and filing these motions before the end of this calendar year.

e. Commence *inter se* proceedings on surface water uses: Following the conclusion of the above described tasks, the State will file a motion for a procedural and scheduling order for *inter se*, and commence to resolve *inter se* objections through litigation or mediation. The State anticipates beginning this proceeding in late calendar 2023 or early 2024.

2. City of Aztec, Farmington and Bloomfield: The State will continue discussions with

the municipalities to reduce the terms of their respective settlement agreements to the form of consent orders, and to agree on procedures to submit those proposed consent orders to the Court for entry.

II. SAN JOSE ADJUDICATION, *New Mexico v. Kerr-McGee Corp.*, Case No. CB-83-190-CV & CB-83-220-CV (consolidated) (13th Judicial District, Cibola County):

A. Accomplishments Over the Past Few Years: N/A

B. FY 2024: not scheduled for FY 2024

III. SANTA FE ADJUDICATION, *Anaya v. Public Service Co. of New Mexico*, Case No. 43, 347 (1st Judicial District, Santa Fe County)

A. Accomplishments Over the Past Few Years: Preliminary technical work on additional Cerro Gordo claims.

B. FY 2024: Continue technical work on additional Cerro Gordo claims.

IV. PECOS ADJUDICATION *State of N.M. & PVACD v. Lewis*, Case Nos. 20294 & 22600 (Consolidated),

A. Roswell Underground Water Basin (“RAB”)

1. Accomplishments Over the Past Few Years:

a. Scheduling and Procedural Order: During the last fiscal year the Court entered the *Scheduling and Procedural Order*, jointly submitted by the State and PVACD, for the adjudication of relation back claims in the RAB.

2. FY 2024:

a. Serving Packets: The State will commence serving packets on relation back claimants in FY 2024.

b. Adjudication of Relation Back Claims: With the service of packets and notification of relation back proceeding to claimants, the State expects to be undertaking subfile consultations, and entering into consent orders for resolved relation back claims throughout fiscal year 2024.

c. Litigate Contested Relation Back Claims: While the State expects to settle most relation back claims, the State will be consolidating contested relation back claims and preparing for litigation throughout fiscal year 2024.

B. Carlsbad—Intrepid Potash:

1. Accomplishments Over the Past Few Years: On April 15, 2022, Defendants Intrepid

Potash, Inc. and Intrepid Potash—New Mexico, LLC filed their Notice of Appeal of, *inter alia*, the Subfile Order and Partial Final Judgment and Decree adjudicating their water rights. Briefing of the appeal was completed in February, 2023.

2. **FY 2024:** not scheduled for FY 2024

C. **Upper Pecos—Cow Creek**

1. **Accomplishments Over the Past Few Years:**

- a. **Recommencing the Cow Creek Adjudication:** Over the last fiscal year the State has reviewed the Hydrographic Survey and the previous Orders of the Court to prepare for the adjudication of the Cow Creek stream system.
- b. **Motion for Amended Procedural Order:** On January 9, 2023, the Court entered the State's proposed *Second Amended Procedural Order Governing the Adjudication of Water Right in the Cow Creek Section*.
- c. **Sending Out Packets:** The State has since joined approximately $\frac{3}{4}$ of known claimants identified in the 2015 Hydrographic Survey by serving them with adjudication packets pursuant to the Court's *Second Amended Procedural Order*.
- d. **Adjudication of Cow Creek Claims:** The State has been undertaking subfile consultations, and entering into consent orders for resolved water right claims throughout the remainder of the last fiscal year.

2. **FY 2024:**

- a. **Sending Out Packets:** The State expects to update ownership and serve all remaining subfile claimants that can be identified by the end of calendar 2023.
- b. **Omitted Claims Notice:** Also by the end of calendar 2023, the State expects to publish notice of the opportunity for water right owners to claim any water rights not depicted or described in the 2015 Hydrographic Survey. The State expects to evaluate those claims and serve adjudication packets on those claimants in FY 2024.
- c. **Adjudication of Cow Creek Claims:** With the sending out of packets and notification of the proceeding to claimants, the State expects to continue undertaking subfile consultations, and entering into consent orders for resolved water right claims throughout the fiscal year.

D. **Gallinas River**

3. **Accomplishments Over the Past Few Years:**

- a. **City of Las Vegas Remand Proceeding:** On June 23, 2022 the Court entered the *Final Order on City of Las Vegas' Equitable Remedy*.

- b. **NMDOT and Concluding the Gallinas *Inter Se*:** On July 2, 2021, with regard to closing out the Gallinas *inter se*, the State and the NMDOT entered into a Memorandum of Understanding, and jointly submitted motions for the entry of 5 amended NMDOT orders consistent with that MOU. Subsequently, during the course of this last year, the NMDOT approached the State with sixteen more subfiles for review of possible further action. This resulted in the entry of one additional amended order. The State submitted its *Notice of Conclusion of Inter Se Proceedings* on March 7, 2023.
- c. **Updating the Addendum to the Partial Final Decree:** The State updated the addendum to the Partial Final Decree to reflect the changes resulting from *inter se*.
- d. **Entry of the Final Partial Judgment and Decree by the Court:** The Court entered its *Final Partial Judgment and Decree on Water Rights for the Gallinas River Section* on June 7, 2023.

4. **FY 2024:** *not scheduled for FY 2024*

E. **Rio Hondo**

- 1. **Accomplishments Over the Past Few Years:** N/A
- 2. **FY 2024:** Litigate remaining objections to priorities.

F. **Fort Sumner Irrigation District**

- 1. **Accomplishments Over the Past Few Years:** N/A
- 2. **FY 2024:** Undertake technical work in preparation for commencing adjudication of irrigation water requirement.

FEDERAL COURT ADJUDICATIONS - PRIORITIES FOR FY 2024

V. CHAMA ADJUDICATION, *N.M. v. Aragon, Case No. 69cv07941-KWR/KK* (U.S.D.Ct., N.M.)

A. **Accomplishments Over the Past Few Years:**

- 1. **Section 1: Rio del Oso:** In September and October 2022, respectively, the Court granted default judgments on three subfiles.
- 2. **Section 1: Mainstem:** On February 1, 2023, moved the Court to rule on 2009 Special Master's Report on priorities for 3 ditches.
- 3. **Section 3: Rio Cebolla:**

- a. One of two pending objections to irrigation water requirements and priorities was withdrawn.
 - b. On September 15, 2022, Court's *Order* correcting remaining clerical error in subfile order entered.
 - c. Prepared addendum summarizing surface water irrigation rights and hydrographic survey maps in anticipation of *inter se*.
4. **Section 3: Canjilon Creek:**
- a. One of two pending objections to irrigation water requirements and priorities was withdrawn.
 - b. Filed *Motion* for entry of Scheduling and Procedural Order to resolve one remaining objection to irrigation water requirements and priorities.
 - c. Prepared addendum summarizing surface water irrigation rights and hydrographic survey maps in anticipation of *inter se*.
5. **Section 7: Cañones Creek:**
- a. Negotiated with two remaining objectors to acéquia and private ditch priority dates.
 - b. Negotiated with two remaining objectors to irrigation water requirements.
 - c. Worked on preparation of addendum summarizing surface water irrigation rights and hydrographic survey maps in anticipation of *inter se*.
6. **Section 7: Rio Brazos:** On December 13, 2022, Court entered its *Order* correcting subfile clerical errors.
7. **Section 7: Rutherford and Plaza Blanca:** On November 28, 2022, Court entered its *Order* correcting subfile clerical error.

B. FY 2024:

- 1. **Section 1: Rio del Oso:** Complete adjudication of individual subfiles, including potential litigation with the Merced del Pueblo Abiquiu.
- 2. **Section 1: Mainstem:** Conclude litigation of priorities for 3 ditches.
- 3. **Section 3: Rio Cebolla**
 - a. Move for entry of final order adjudicating irrigation water requirements and priorities.

- b. Finalize addendum summarizing surface water irrigation rights and hydrographic survey maps.
- c. Commence *inter se* and move for entry of partial final judgment and decree for surface water irrigation rights.

3. Section 3: Canjilon Creek

- a. Litigate to conclusion the one remaining objection to irrigation water requirements and priorities.
- b. Prepare addendum summarizing surface water irrigation rights and hydrographic survey maps.
- c. Commence *inter se* and move for entry of partial final judgment and decree for surface water irrigation rights.

4. Section 7: Cañones Creek

- a. Determine acéquia and private ditch priority dates. Two objections remain (in negotiations with the objectors).
- b. Determine irrigation water requirements. Two objections remain (in negotiations with the objectors).
- c. Prepare addendum summarizing surface water irrigation rights and hydrographic survey maps.
- d. Commence *inter se* and move for entry of partial final judgment and decree for surface water irrigation rights.

8. **Section 7: Rio Brazos:** *not scheduled for FY 2024.*

9. **Section 7: Rutheron and Plaza Blanca:** *not scheduled for FY 2024.*

VI. TAOS ADJUDICATION, *New Mexico v. Abeyta*, Case No. CV-69-7896-MV/WPL & No. CV-7939-MV/WPL (consolidated) (U.S.D.Ct., N.M.)

- A. **Accomplishments Over the Past Few Years:** Reconcile subfile orders with WRATS and hydrographic survey maps.
- B. **FY 2024:** Prepare addendum for *inter se* of surface water rights.

VII. ZUNI ADJUDICATION, *U.S. v. N.M. v. A & R Productions*, Case No. 01-cv-00072-DHU-JHR (U.S.D.Ct., N.M.)

- A. **Accomplishments Over the Past Few Years:**

1. Approximately 950 non-Indian, non-federal subfiles have been adjudicated—three subfiles remain unresolved.
2. On June 6, 2022 briefing was completed on the State and the United States' *Objections to the Proposed Findings and Recommended Disposition* of the Magistrate Judge regarding their *Motion for Summary Judgment* regarding one of three remaining subfiles to be adjudicated: Meech Concrete.
3. The State and the United States engaged in settlement negotiations regarding the two other remaining subfiles.

B. FY 2024:

1. Once a ruling is made on the above referenced *Objections*, complete litigation of the three remaining subfiles described above.
2. Consult with U.S. on scheduling *inter se* proceedings for FY 2025 and development of proposed procedural motion, proposed partial final judgment and decree and addendum.

VIII. SANTA CRUZ/TRUCHAS ADJUDICATION, *New Mexico v. Abbott*, Case No. 68-7488 KWR/JHR (*Santa Cruz*) and Case No. 70-8650 KWR/JHR (*Truchas*) (N.M. D.Ct., N.M.)

A. Accomplishments Over the Past Few Years: Work on litigating duty of water and priority dates.

B. FY 2024:

1. The State will move for a final determination of Truchas priorities.
2. Conclude the litigation of Santa Cruz priorities.
3. Conclude errors and omissions work on Santa Cruz/Truchas subfiles.

IX. SANTA CLARA CREEK

A. Accomplishments Over the Past Few Years: N/A

B. FY 2024 – Undertake technical studies in anticipation of commencing a hydrographic survey of all water rights in the Santa Clara Creek tributary of the Rio Grande.

X. JEMEZ ADJUDICATION, *U.S. v. Abousleman*, Case No. 6:83-cv-01041-MV-JHR (U.S.D.Ct., N.M.)

C. Accomplishments Over the Past Few Years: completed 2000 PFJD

D. FY 2024 – *not scheduled for fiscal year 2024*

XI. NAMBÉ-POJOAQUE-TESUQUE ADJUDICATION, *New Mexico v. Aamodt*, Case No. 66-cv6639- MV/WPL (U.S.D.Ct, N.M.)—FJD entered 2017 and case closed.

A. Accomplishments Over the Past Few Years: – completed 2017 FJD

B. FY 2024 – *not scheduled for fiscal year 2024*

STATE OF NEW MEXICO’S RULE 71.3 REPORT

**Table 1: Northern New Mexico/Pecos Adjudication Bureau Priority Sections & Resources
For Fiscal Year 2024**

| PRIORITY ADJUDICATION SECTION | Staff Atty | Contract Atty | Staff Para- legal | Survey Staff | Technical Contractor | Data/IT Staff | Section Totals |
|--|---------------|------------------|-------------------------|-----------------|-------------------------|------------------|-------------------|
| STATE COURT ADJUDICATIONS | | | | | | | |
| <i>San Juan</i> | | | | | | | |
| <i>Section 1 (La Plata)</i> | 1.0 | | 1.0 | 0.5 | | | 2.5 |
| <i>San Juan Subtotals</i> | 1.0 | | 1.0 | 0.5 | | | 2.5 |
| <i>Santa Fe—Cerro Gordo</i> | | | | 0.5 | | | 0.5 |
| <i>Pecos</i> | | | | | | | |
| <i>Roswell Underground Basin—Relation Back</i> | 0.5 | 1.0 | 0.5 | | | | 2.0 |
| <i>Upper Pecos—Cow Creek</i> | 1.5 | | 0.5 | 0.5 | | | 2.5 |
| <i>Rio Hondo</i> | | 0.5 | | | | | 0.5 |
| <i>Fort Sumner Irrigation District</i> | 0.5 | | | | | | 0.5 |
| <i>Pecos Subtotals</i> | 3.5 | 1.5 | 2.0 | 1.5 | | | 8.5 |
| FEDERAL COURT ADJUDICATIONS | | | | | | | |
| <i>Chama (Aragon)—Non-Indian</i> | 0.5 | | 0.5 | 0.5 | | | 1.5 |
| <i>Santa Cruz/Truchas—Non-Indian</i> | 0.5 | | | | | | 0.5 |
| <i>Santa Clara Creek—Non-Indian</i> | 0.5 | | | 0.5 | | | 1.0 |
| <i>Taos (Abeyta)—Non-Indian</i> | | | 0.5 | 0.5 | | | 1.0 |
| CATEGORY TOTALS – ALL SECTIONS | 5.0 | 1.5 | 3.0 | 3.0 | | | 12.5 |